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Client/Matter: 070386-0303769

REMARKS

Claims 1-22 and 24-30 are pending. By this amendment, Figure 3 is amended; the specification is amended; claim 23 is cancelled without prejudice or disclaimer; and claims 1, 2, 24-26 and 30 are amended. Reconsideration in view of the above amendments and following remarks is respectfully requested.

Applicant respectfully notes that claim 24 depends from claim 23. Claim 23 was rejected over the combination of Nimberger et al. and Kaufman. Claim 24, however, was rejected over the combination of Nimberger et al. and Dotan. The combination of Nimberger et al. and Dotan does not present a *prima facie* case of obviousness against claim 24 as it does not include the features allegedly shown by Kaufman, which are relied upon to reject claim 23, from which claim 24 depends. In other words, if claim 23 is rejected over the combination of Nimberger et al. and Kaufman and claim 24 depends from claim 23, claim 24 must be rejected, at least, over the combination of Nimberger et al., Kaufman and Dotan if a *prima cause* obviousness is to be established against claim 24. As the rejection of claim 24 does not include Kaufman, the rejection is improper and must be withdrawn. Applicant also respectfully notes that claim 23 has been incorporated into claim 1 and the dependency of claim 24 amended to depend from claim 1. These amendments would not necessitate a change in the grounds for rejection as they are merely rewriting claims in independent form and should the Examiner change the ground of rejection against claim 24 to include Kaufman to correct the deficiency of the rejection such change would not be necessitated by Applicant's amendment and must be non-final.

Figure 3 has been amended to include reference number 92, disclosed in paragraph [0043]. Paragraph [0043] has been amended in accordance with the amendments to Figure 3. No new matter has been added.

Claims 2 and 26 were objected to. Claims 2 and 26 have been amended in accordance with the suggestion of the Office Action. Reconsideration and withdrawal of the objection to claims 2 and 26 are respectfully requested.

Claims 1, 2, 4, 6, 8-12, 17, 18 and 22 were rejected under 35 U.S.C. §102(b) over Nimberger et al. (U.S. Patent 6,352,361) and claims 3, 5, 13 and 14 were rejected under 35 U.S.C. §103(a) over Nimberger et al. Claim 23 was rejected under 35 U.S.C. §103(a) over Nimberger et al. in view of Kaufman (U.S. Patent 4,866,997). The rejections are respectfully traversed.

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As discussed above, claim 1 has been amended to include claim 23. Claim 1 recites a temperature probe for measuring the internal temperature of a mass of packed tobacco product including, *inter alia*, an elongated tubular shaft having a hollow interior, an insulating structure mounted on the elongated shaft, a heat conducting structure coupled to the insulating structure, a thermocouple coupled to the heat conducting structure and extending into the hollow interior of the elongated shaft, a control device electrically communicated to the thermocouple and operable to determine a temperature from the thermocouple and a lifting mechanism coupled to the elongated tubular shaft and the control device that moves the heat conducting structure between a raised position and a lowered position.

There is no disclosure or suggest by Nimberger et al. of the combination of features discussed above with respect to claim 1. Nimberger et al. disclose a temperature sensing device for metering fluids or gases in a pipeline 10D and including an upper mounting housing 62D which is threadedly provided in a weld flange 24D provided on the pipeline 10D. Nimberger et al. do not disclose or suggest an actuator coupled to the mounting housing 62D and configured to displace the housing. Accordingly, Nimberger et al. cannot anticipate or render obvious claim 1.

Kaufman et al. disclose a grain probe for sampling and measuring the physical characteristics of stored grain. The probe includes a telescopic shaft with a meter fixedly attached to one end thereof. Kaufman does not disclose or suggest an a lifting mechanism coupled to the elongated tubular shaft and the control device that moves the heat conducting structure between a raised position and a lowered position. Accordingly, the combination of Nimberger et al. and Kaufman fails to present a *prima facie* case of obviousness.

Claims 2-6, 8-14, 17, 18 and 22 recite additional features of the invention and are allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein.

Reconsideration and withdrawal of the rejection of claims 1-6, 8-14, 17, 18 and 22 over Nimberger et al. and Kaufman are respectfully requested.

Claim 7 was rejected under 25 U.S.C. §103(a) over Nimberger et al. in view of Benzinger (U.S. Patent 4,191,197). The rejection is respectfully traversed.

Claim 7 recites additional features of the invention and is allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein. In addition, it is respectfully submitted that Benziger fails to cure the deficiencies of

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Nimberger et al. with respect to claim 1. In particular Benzinger also fails to disclose or suggest a lifting mechanism coupled to the elongated tubular shaft and the control device that moves the heat conducting structure between a raised position and a lowered position. Accordingly, even assuming it would have been obvious to combine Nimberger et al. and Benzinger, such a combination would not have resulted in the invention of claim 1. In addition, it is respectfully submitted there is no suggestion or motivation to combine Nimberger et al. and Benzinger as Benzinger is directed to a thermometer system for improved body temperature measurements, especially within the ear canal, and one of ordinary skill in the art would not have been motivated to combine these teachings with the device of Nimberger et al. for metering fluids or gases in a pipeline.

Reconsideration and withdrawal of the rejection of claim 7 over Nimberger et al. in view of Benzinger are respectfully requested.

Claims 15 and 16 were rejected under 35 U.S.C. §103(a) over Nimberger et al. in view Schafer et al. (U.S. Patent 5,139,345). The rejection is respectfully traversed. Claims 15 and 16 recite additional features of the invention and are allowable for the same reasons discussed above with respect to claim 1. In addition, it is respectfully submitted that Schafer et al. fail to cure deficiencies of Nimberger et al. with respect to claim 1. In particular, it is respectfully submitted that Schafer et al. also fail to disclose or suggest a lifting mechanism coupled to the elongated tubular shaft and the control device that moves the heat conducting structure between a raised position and a lowered position. Accordingly, even assuming it would have been obvious to combine Nimberger et al. and Schafer et al., the combination would not include all the claimed limitations and would not present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection of claims 15 and 16 over Nimberger et al. in view of Schafer et al. are respectfully requested.

Claim 19 was rejected under 35 U.S.C. §103(a) over Nimberger et al. in view of Wu et al. (U.S. Patent 6,712,996). The rejection is respectfully traversed.

Claim 19 recites additional features of the invention and is allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein. In addition, it is respectfully submitted that Wu et al. fail to cure the deficiencies of Nimberger et al. with respect to claim 1. In particular, it is respectfully submitted that Wu et al. fail to disclose or suggest a lifting mechanism coupled to the elongated tubular shaft and the control device that moves the heat conducting structure between a raised position and a

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lowered position. Accordingly, even assuming it would have been obvious to combine Nimberger et al. and Wu et al., the combination would not present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection of claim 19 over Nimberger et al. in view of Wu et al. are respectfully requested.

Claim 20 was rejected under 35 U.S.C. §103(a) over Nimberger et al. in view of Mauze et al. (U.S. Patent 6,202,480). The rejection is respectfully traversed.

Claim 20 recites additional features of the invention and is allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein. In addition, Mauze et al. fail to cure the deficiencies of Nimberger et al. with respect to claim 1 as Mauze et al. also fail to disclose or suggest a lifting mechanism coupled to the elongated tubular shaft and the control device that moves the heat conducting structure between a raised position and a lowered position. Accordingly, the combination of Nimberger et al. and Mauze et al. fails to present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection of claim 20 over Nimberger et al. in view of Mauze et al. are respectfully requested.

Claim 21 was rejected under 35 U.S.C. §103(a) over Nimberger et al. in view of Swearingen (U.S. Patent 4,217,463). The rejection is respectfully traversed.

Claim 21 recites additional features of the invention and is allowable for the same reasons discussed above with respect to claim 1 and for the additional features recited therein. Swearingen also fails to disclose or suggest a lifting mechanism coupled to the elongated tubular shaft and the control device that moves the heat conducting structure between a raised position and a lowered position and thus the combination of Nimberger et al. and Swearingen fails to present a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection of claim 21 over Nimberger et al. in view of Swearingen are respectfully requested.

Claims 24-30 were rejected under 35 U.S.C. §103(a) over Nimberger et al. in view of Dotan (U.S. Patent 6,250,802). The rejection is respectfully traversed.

It is respectfully submitted that there is no motivation or suggestion to combine Nimberger et al. with either Kaufman and/or Dotan, as alleged by the Examiner. Firstly, Kaufman does not disclose or suggest a lifting mechanism coupled to the elongated tubular shaft, as recited in claim 23. Kaufman merely discloses that the telescoping shaft subsections 31a, 31b, 31c are connected together by spring biased locks. See column 3, lines 2-21.

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Secondly, there is no motivation to provide a lifting mechanism to the temperature sensing device of Nimberger et al. The temperature sensing device of Nimberger et al. is clearly intended to be fixed to the pipeline 10D by threading the upper mounting housing 62D into the weld flange 24D. As the temperature sensing device of Nimberger et al. is intended to meter fluids in a pipeline, one of ordinary skill would not have been motivated to raise and lower the temperature sensing device into and out of the pipeline.

Thirdly, one of ordinary skill in the art would not have been motivated to combine Dotan with either Nimberger et al. and/or Kaufman. The electronic thermometer of Dotan includes a preheating device to shorten the measuring time. See column 1, lines 7-9. As discussed above, the temperature sensing device of Nimberger et al. is intended to be fixed to the pipeline to meter the temperature of the fluid in the pipeline. As the temperature sensing device of Nimberger et al. is intended to continuously monitor the temperature of the fluid or gas in the pipeline, one of ordinary skill in the art would not have been concerned with shortening the measuring time and would not have been motivated to combine Dotan and Nimberger et al.

Claim 25 recites a method of determining a internal temperature of a packed mass product including, *inter alia*, determining a temperature of heat conducting structure, comparing the temperature of the heat conducting structure to a predetermined temperature range to determine if the temperature of the heat conducting structure is within the predetermined range, changing the temperature of the heat conducting structure if the temperature of the heat conducting structure is outside of the predetermined temperature range, inserting the probe into the mass so that the heating conducting structure is disposed in thermal communication with the product on the interior of the mass, and determining the internal temperature of the mass based on information from the temperature probe.

The Office Action alleges on page 11, lines 9 and 10 that "The method steps will be met during the normal operation of the device stated above."

As discussed above, it is respectfully submitted that there is no motivation or suggestion to combine Nimberger et al. and Kaufman and/or Dotan. The temperature sensing device of Nimberger et al. is continuously placed into the fluid or gas stream in the pipeline and one of ordinary skill in the art would not have been motivated to compare the temperature of the temperature sensing device of Nimberger et al., change the temperature of the heat conducting structure if outside a predetermined range, and insert the temperature sensing device into the pipeline as recited in claim 25.

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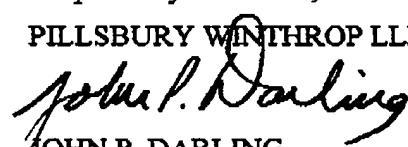
Claims 26-29 recite additional features of the invention and are allowable for the same reasons discussed above with respect to claim 25 and for the additional features recited therein.

Claims 30 recites a temperature probe assembly mounted for insertion into a product mass for measuring an internal temperature of the mass including, *inter alia*, a lifting mechanism coupled to the insulated shaft and the temperature controller that moves the heat conducting structure between a raised position and a lowered position. As discussed above, there is no motivation to combine Nimmerger et al. with Kaufman and/or Dotan. In addition, the combination of Nimmerger et al. and Dotan fails to disclose or suggest a lifting mechanism coupled to an insulated shaft, as recited in claim 30. Accordingly, the combination of Nimmerger et al. and Dotan fails to present a *prima facie* case of obviousness against claim 30.

Reconsideration and withdrawal of the rejection of claims 24-30 under 35 U.S.C. §103(a) over Nimmerger et al. in view of Dotan are respectfully requested.

In view of the above amendments and remarks, Applicant respectfully submits that all the claims are allowable and that the entire application is in condition for allowance.

Should the Examiner believe that any thing further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,  
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Attachment:

Replacement Sheet (Fig. 3)